UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 2:09-cr-90
	)	
STEPHEN AGUIAR	)	

OPINION AND ORDER

This matter comes before the Court for review of Magistrate Judge John M. Conroy's August 12, 2016 Report and Recommendation ("R & R"), in which the magistrate judge recommends denying Defendant Stephen Aguiar's petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2255, and related motions. Mr. Aguiar is arguing for relief on the basis of ineffective assistance of counsel, and has filed an objection to the R & R.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

This Court has reviewed Mr. Aguiar's objections, and ADOPTS

the Magistrate Judge's R & R in full.

The Motion to Vacate (Doc. 717), Motion for Leave to Conduct Discovery (Doc. 719), Motion to Expand the Record (Doc. 720), Motion to Supplement the Record (Doc. 728), Motion to Strike (Doc. 746), Motion for Order Directing Government or Counsel to Provide Defendant with Discovery Material (Doc. 714), Motion for Appointment of Counsel (Doc. 718), and Renewed Motion for Appointment of Counsel (Doc. 735) are DENIED. In addition, the Motion to Strike Agent Carter's testimony (Doc. 757) is DENIED AS MOOT.

The Court notes that under the standard set forth in *Strickland v. Washington*, Mr. Aguiar must show not only that counsel's performance was "outside the wide range of professionally competent assistance," but also that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. 668, 690, 694 (1984). "As is obvious, *Strickland*'s standard, although by no means insurmountable, is highly demanding." *Kimmelman v. Morrison*, 477 U.S. 365, 382, (1986). Mr. Aguiar's petition fails to satisfy this demanding standard.

Having presided over the trial in this case, the Court recalls the thorough and vigorous arguments advanced by Attorney David Williams in his role as defense counsel. Multiple pre-trial hearings were held and substantial briefing was submitted

on behalf of the defense. Attorney Williams continued his zealous advocacy throughout the 11-day trial, and as Mr. Aguiar's counsel on appeal.

Despite the efforts of Attorney Williams, the evidence supporting Mr. Aguiar's conviction was overwhelming. The trial included testimony from multiple cooperating co-defendants, recorded intercepts, verified controlled purchases, and hundreds of pieces of evidence. In affirming the conviction and sentence, the Second Circuit referenced "the volume of evidence introduced at trial by the government" in finding that an allegedly-unconstitutional search was harmless. *United States v. Aguiar*, 737 F.3d 251, 263 (2d Cir. 2013). This same observation pertains to Mr. Aguiar's current arguments, as even considering the aggregate impact of any alleged errors, the sheer volume of evidence negated any resulting prejudice. *See Strickland*, 466 U.S. at 696 ("a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support").

Moreover, Attorney Williams's performance throughout his representation of Mr. Aguiar was well within the bounds of professional competence, and his affidavit submitted in support of the government's opposition to the Section 2255 petition explains his rationale for pursuing some efforts and abandoning others. The magistrate judge did not err in relying on that

affidavit, *see* 28 U.S.C. § 1746 (stating that oath must comply "substantially" with the statements set forth in the statute), and the Court ADOPTS the R & R on all points.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. *See e.g., Flieger v. Delo*, 16 F.3rd 878, 882-83 (8th Cir.) *cert. denied*, 513 U.S. 946 (1994); *Sawyer v. Collins*, 986 F.2d 1493, 1497 (5th cir.), *cert. denied*, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal taken *in forma pauperis* would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

DATED at Burlington, in the District of Vermont, this 23rd day of January, 2017.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge